

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 49-020.4

Specific Purpose:

This section is adopted to define the terms “entry date” or “entered the United States” for purposes of determining Cash Assistance Program for Immigrants (CAPI) eligibility as the effective date of the non-citizen’s current immigration status as determined by the Immigration and Naturalization Service, except for the situations described in Sections 49-020.41 and .42.

Factual Basis:

This section is needed to clarify existing regulations in Sections 49-020.2 and .3 and to comply with CDSS’ Director’s Designation of Decision as Precedential Decision dated September 5, 2002.

Sections 49-020.41 and .42

Specific Purpose:

These sections are adopted to specify exceptions to the general definition of the terms “entry date” or “entered the United States” for a non-citizen who meets one of the following criteria:

1. Is a current CAPI recipient whose immigration status was adjusted after he or she began receiving CAPI benefits. In this situation the entry date that was used to make the initial CAPI eligibility determination will continue to be used in future redeterminations.
2. Had an immigration status as of August 21, 1996 that met the definition of Qualified Alien and has maintained continuous residence in the United States since at least August 21, 1996. In this situation, the effective date of the Qualified Alien status the person held on August 21, 1996 will be deemed to be his or her entry date for purposes of determining CAPI eligibility even if the non-citizen later adjusts his or her immigration status.

Factual Basis:

These sections are needed to clarify existing regulations in Sections 49-020.2 and .3 and to comply with CDSS' Director's Designation of Decision as Precedential Decision dated September 5, 2002.

b) Identification of Documents Upon Which Department Is Relying

CDSS' Director's Designation of Decision as Precedential Decision dated September 5, 2002.

c) Local Mandate Statement

These regulations do not impose a mandate upon county welfare departments because they simply clarify existing regulations and reflect existing departmental policy.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on April 16, 2003 in Sacramento, California. There was no oral testimony. Written testimony was received from Neighborhood Legal Services of Los Angeles County.

General

1. Comment:

“We are writing to comment on the proposed emergency regulations regarding the Cash Assistance Program for Immigrants (CAPI) definition of “entry date” contained in ORD #1202-29 as issued in February 2003. You propose to add Sections 49-020.4 through .42. We submit these comments on behalf of our clients.

“Under the statutes governing CAPI, elderly and disabled immigrants may be denied subsistence benefits for up to ten years if they “entered the United States on or after August 22, 1996.”¹

“The California Department of Social Services’ (DSS) novel interpretation cannot be reconciled with the plain language, legislative history of structure of the CAPI statutes (sp). The work (sp) “entered,” when appearing before a physical place is defined by every dictionary to mean “go or come into.” If the Legislature intended to benefit only those persons who became lawful permanent residents before August 22, 1996, it knew how to do so. In fact, previous legislation defined a group of immigrants eligible for CAPI as those who “legally entered the United States...” The Legislature, by dropping the word “legally” from all the current CAPI statutory dates, has reaffirmed that the date a person “entered the United States” is the date of physical entry, not the date immigration status was changed.

“This conclusion is consistent with the federal Supplemental Security Income (SSI) laws upon which the CAPI statutes were based. The federal agency charged with implementing the SSI program has determined that the date a person “enters” the United States, whether before or after the passage of the 1996 welfare law, is the date of actual entry, regardless of the person’s immigration status on that date.”

Response:

1. The comments contend that “entered” has its “common sense” meaning of “physical arrival.” However, the term “entered” as used in the CAPI statute is ambiguous and requires construction for a number of reasons. First, an immigrant may physically arrive and exit the country multiple times, but the statute does not specify which physical arrival to designate as the “entry” for purposes of determining which sponsor-deeming rules apply. For example, the initial physical arrival, the most recent physical arrival, or the physical arrival selected by the immigrant could be considered “entry” in the absence of more specific direction. This lack of clarity demonstrates the ambiguity inherent in the statutory language.
2. Further, the federal Social Security Administration (SSA) has adopted two different definitions of “entered” in administering federal benefits to immigrants. The SSA uses a definition that is based on physical arrival for purposes of determining an immigrant’s eligibility for various forms of benefits under 8 U.S.C. Section 1613(a). However, the SSA also uses a definition that is based on when the immigrant was Lawfully Admitted for Permanent Residence (LAPR) for purposes of determining when to start the three-year sponsor-deeming period. (42 U.S.C. Section 1382j(a); 20 CFR § 416.1160(d); *Digamon v. Sullivan* (D.Md. 1993) 813 F.Supp. 404.) Thus, contrary to the assertion made in the comments that federal law defines “entry” to mean “physical arrival,” and that definition

¹ Welf. & Inst. Code §§18938(a)(3); 18940(b). All unspecified statutory references will be the Welfare and Institutions Code.

supports the argument that the term “entry” is not ambiguous, the split in federal law over the definition of “entry” supports the conclusion that the term is ambiguous.

3. Where statutory ambiguity exists, CDSS, as the state agency delegated with implementing CAPI, is required to develop an interpretation of the term [Welfare and Institutions Code Sections 10554, 18937, and 18943; see also Government Code Section 11425.60(b)]. This proposed regulation is based largely on when a CAPI applicant obtained his or her “current” immigration status (i.e., the status of the applicant at the time he or she applied for CAPI). For virtually all sponsored immigrants to whom the 10-year sponsor-deeming period set forth in Welfare and Institutions Code Section 18938(a)(3), applies, this will be the date on which an immigrant obtained lawfully-admitted permanent resident (LAPR) status, because immigrants are required to obtain sponsors as part of their LAPR application. Under the proposed regulation, CDSS may, in determining CAPI eligibility, consider the assets of an able-bodied non-abusive sponsor of an immigrant who physically entered the country decades ago, but only took steps in the last few years to obtain permanent residency (including obtaining a sponsor), while under the interpretation set forth in the comments, CDSS may not. Therefore, the proposed regulation reasonably advances the statutory purpose of providing benefits to those who need them but not to those who have assets available from other sources (See *Yamaha Corp. v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 7.).
 4. The comments argue that, by amending Welfare and Institutions Code Section 18938 in 1999 to delete the qualifier “legally” before the term “entered,” the Legislature intended “enter” to mean “physical arrival.” There is, however, a much more likely explanation for this amendment: deletion of “legally” was intended to make clear that immigrants who entered illegally are potentially entitled to CAPI benefits. The nature of an immigrant’s arrival in the United States, whether legal or illegal, is not a component of CAPI eligibility. Rather, CAPI eligibility is based on an immigrant’s status at the time that he or she applies for the program.
2. Comment:

“The plain language of the statute refers to physical entry, rather than admission to the U.S. as lawful permanent resident.

“Section 18938, which sets forth the eligibility rules for the program, distinguishes between CAPI applicants based on whether they “entered” the United States before or after August 22, 1996.

“The courts have consistently ruled that “to determine the intent of legislation, we first consult the words themselves, giving them their usual and ordinary meaning.” DaFonte v. Up-Right, Inc., 2 Cal.45h 593, 601 (1992). “Where the statute is clear,

courts will not ‘interpret away clear language in favor of an ambiguity that does not exist.’” Hartford Fire Ins. Co. v. Macri, 4 Cal.4th 318, 326 (1992).

“Furthermore, Black’s Law Dictionary states that the word “entry” means, “to come of go into.” Bryan Garner, Black’s Law Dictionary (7th ed. 1999). The dictionary does not define “enter” as meaning adjustment of immigration status.

“The plain language suggests that the term “entry” means nothing more than physical entry.”

Response:

See paragraphs 1, 2 and 3 in response to comment #1.

3. Comment:

“The Legislative History and structure of the Statute support a physical entry definition.

“When the Legislature has intended to convey a meaning other than physical entry, it has know (sp) how to do so. The CAPI statute, as originally enacted in 1998, used the phrase “legally entered the United States on or after August 22, 1996” in describing one of the groups that was eligible for the original program. Former § 18938(a)(2), Stats. 1998, ch 329, Section 38. However, in 1999, the Legislature purposefully dropped the word “legally,” and chose to leave the language “entered the United States on or after August 22, 1996,” without qualification, and that is how the statute stands today. Stats. 1999, ch. 147, § 42.7, amending § 18938 subd. (a)(2).

“The structure of the CAPI statute also supports the physical entry definition. Section 18938 does not limit eligibility for CAPI to Legal Permanent Residents. Rather, a person is potentially eligible “if his or her immigration status meets the criteria [for the SSI program] in effect on August 21, 1996. Section 18938(a)(1). On that date, SSI was available not only to Legal Permanent Residents, but also to individuals “permanently residing in the United States under color of law...” 42 U.S.C. Section 1382c(a)(1)(B). Thus the word “entry” in the CAPI statute could not possibly refer only to the date that a person becomes a Legal Permanent Resident.

“DSS’ proposed regulations cannot be supported by the language, structure or legislative history of the CAPI statutes.”

Response:

See paragraphs 1, 2, 3 and 4 in response to comment #1.

4. Comment:

“DSS’ interpretation of “entry” departs from the Immigration Law’s definition of the term.

“DSS’ interpretation is inconsistent with longstanding principles of immigration law, which does not equate “entry” with lawful permanent residence. Although immigration statutes no longer define entry, when they did so the definition was, “any coming of an alien into the United States, from a foreign port or place or from an outlying possession” subject to certain exceptions. Yang v. Maugans, 68 F.3d 1540, 1548 (3d Cir. 1995). Under the current case law, a person “enters” the United States if he or she physically is in the country and is not under official restraint. U.S. v. Parga-Rosas, 238 F.3d 1209, 1213 (9th Cir. 2001).

“Under immigration law, entry means physical entry, not adjustment of immigration status. DSS’ interpretation of the CAPI statute cannot be justified by the language of the statute or its legislative history or by immigration laws.”

Response:

See paragraph 2 in response to comment #1.

g) 15-Day Renotice Statement

A 15-Day Renotice was not held because there were no revisions to the regulations as a result of the public hearing.